

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF VENTURA
VENTURA DIVISION**

TENTATIVE RULINGS

EVENT DATE: 10/19/2020 EVENT TIME: 08:20:00 AM DEPT.: 20
JUDICIAL OFFICER: Matthew P. Guasco

CASE NUM: 56-2020-00541930-CU-MM-VTA
CASE TITLE: BECKER VS. COMFY DENTAL GROUP AND ORTHODONTICS

CASE CATEGORY: Civil - Unlimited CASE TYPE: Medical Malpractice

EVENT TYPE: Demurrer (CLM) - to First Amended Complaint
CAUSAL DOCUMENT/DATE FILED: Demurrer, 09/15/2020

Notice Regarding Courtroom 20 Law & Motion Procedures: The law and motion calendar in Courtroom 20 before Judge Matthew P. Guasco starts promptly at 8:30 a.m. Ex parte applications will be heard at the same time as matters on the law and motion calendar. Parties appearing by Court Call must check in with the Judicial Assistant by 8:20 a.m. No notice of intent to appear is required. Parties wishing to submit on the tentative decision must so notify the Court by e-mail at Courtroom20@ventura.courts.ca.gov or by fax to Judge Guasco's secretary, Lori Jacques at (805) 477-5892. **Do not call in lieu of sending an e-mail or fax.** If a party submits on the tentative decision without appearing, but another party appears, the hearing will be conducted in the absence of the non-appearing party. Effective February 13, 2018, all cases assigned to Courtroom 20 are assigned for all purposes (including trial) to Judge Guasco.

COVID-19 NOTICE: Pursuant to the administrative orders of the Presiding Judge and the Civil Reopening Plan, effective June 10, 2020, and until further notice, all attorneys and self-represented parties in law and motion hearings must appear telephonically via Court Call; there shall be no personal appearances in the courtroom without the prior express approval of Judge Guasco. You may contact Court Call as follows: www.courtcall.com or call 888-882-6878.

The following is the Court's tentative decision concerning the demurrer of defendants, Kamran Shahsavari, D.D.S., and Kamran Shahsavari, D.D.S., Inc., d/b/a Comfy Dental Group and Orthodontics Dental Group of Kamran Shahsavari ("defendants"), as to the First-Amended Complaint ("FAC") of plaintiff, Steve Becker ("plaintiff"):

Meet & Confer

The Court is satisfied that defendants fulfilled their obligation to meet and confer with plaintiff prior to filing the demurrer. (Code of Civ. Proc., §430.41, subd. (a).)

Legal Principles

In ruling on a demurrer, the Court treats all properly pleaded facts in the complaint as admitted. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318, 216 Cal.Rptr. 718, 703 P.2d 58.) The demurrer is limited to the four corners of the complaint and any additional facts which are properly the subject of judicial notice. (Code of Civ. Proc., § 430.30, subd.(a).) If there is a reasonable possibility that a pleading deficiency can be cured, it is an abuse of discretion for the Court to deny leave to amend. (*Blank v. Kirwan, supra*, 39 Cal.3d at p. 318, 216 Cal.Rptr. 718, 703 P.2d 58.)

Demurrers on the ground of uncertainty are disfavored and should only be sustained in the event the complaint is so vaguely and deficiently pleaded that the demurring defendant reasonably cannot intelligently respond to the complaint. (*Khoury v. Maly's of California, Inc.* (1993) 14 Cal.App.4th 612, 616, 17 Cal.Rptr.2d 708.)

Complaints must allege facts, not merely conclusions, supporting each cause of action. (*Shopoff & Cavallo LLP v. Hyon* (2008) 167 Cal.App.4th 1489, 1509, 85 Cal.Rptr.3d 268.)

Ruling on Demurrer

The Court OVERRULES the special demurrer to the Second and Third Causes of Action of the FAC (intentional concealment and constructive fraud, respectively). There is nothing vague or uncertain about the allegations of the FAC. Any further clarification of the facts and legal theories underlying these causes of action may be achieved by discovery.

The Court SUSTAINS the general demurrer as to the Second and Third Causes of Action WITH LEAVE TO AMEND. Ordinarily, an action for dental malpractice does not involve causes of action for fraud. The dental malpractice claim is one sounding in professional negligence, that is, a breach of the standard of care. By definition, negligence is not the intentional tort of fraud.

A cause of action for fraud, whether by misrepresentation or concealment, must be pleaded with factual specificity. (*Stansfield v. Starkey* (1990) 220 Cal.App.3d 59, 72-73, 269 Cal.Rptr. 337.) A "[p]laintiff may allege on information and belief any matters that are not within his personal knowledge, if he has information leading him to believe that the allegations are true." (*Pridonoff v. Balokovich* (1951) 36 Cal.2d 788, 792, 228 P.2d 6.)" (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 550, 67 Cal.Rptr.3d 330, 169 P.3d 559.)

The problem here is that plaintiff alleges the same facts concerning defendants' intentional fraudulent concealment both on information and belief and without that qualifier. There are insufficient facts stated supporting the information and belief allegations about defendants' alleged intentional concealment of their own malpractice. Thus, this case is distinguishable from that presented in *Carney v. Simmonds* (1957) 49 Cal.2d 84, 315 P.2d 305, in which the complaint contained detailed factual allegations supporting that plaintiff's information and belief allegations. Such specificity is required in a fraud action prefaced on information and belief allegations.

This defect can be cured by amendment, as the opposition to the demurrer suggests. Accordingly, the Court grants plaintiff leave to amend.

Plaintiff shall serve and file a Second-Amended Complaint consistent with the above and in conformity with the Code of Civil Procedure and the California Rules of Court by no later than **November 9, 2020**.

Counsel for defendants shall serve and file a notice of ruling and proposed order consistent with the above and in conformity with the Code of Civil Procedure and the Rules of Court. A copy of this tentative decision (if adopted by the Court as its final ruling) may be attached to any such proposed order in lieu of copying the same verbatim in the body of the document.